

DOCTORS AND LAWYERS

WHO'S GOT YOUR BACK?

NEW MANAGEMENT PLAN HELPS CLINICIANS WITH DISCLOSING MISTAKES

Disclosing medical mistakes—while ethically and legally appropriate—is a challenge for many physicians, but a new management plan published in *The Permanente Journal* (Spring 2013) may provide some aid in the process. The plan is a theoretically based, streamlined, two-step process that physicians can use as an initial guide for conversations with patients about medical mistakes. They are:

1. Physician preparation, such as talking about the physician's emotions and seeking information about the mistake.
2. Use of mistake disclosure strategies that protect the physician-patient relationship. These include the optimal timing, context of disclosure delivery, content of mistake messages, sequencing, and apology.

The creators of the plan note that this "Mistake Disclosure Management Plan" may help physicians in the early stages after mistake discovery to prepare for the initial disclosure of a medical mistake. The next step, the authors note, is testing implementation of the procedures suggested.

FAILURE TO ADMINISTER INFORMED CONSENT, NON-PHYSICIAN OPERATORS CITED AS MOST COMMON REASONS FOR LEGAL ACTION OVER LASER SURGERY

Claims related to cutaneous laser surgery are increasing and result in indemnity payments that exceed the previously reported average across all medical specialties. Authors of a new study published in *JAMA Dermatology* (February 2013) used an online national database to perform a search of public legal documents from 1985 to 2012, specifically noting details such as frequency and nature of cases, location and certification of provider, injury sustained, cause of legal action, verdict, and indemnity payment.

The authors identified 174 cases related to injury stemming from cutaneous laser surgery. In particular, they observed an increasing trend in recent years and also that laser hair removal was the most common litigated procedure.

Other findings of note include the substantial number of

non-physician operators accounting for lawsuits. Yet, their physician supervisors were named as defendants in most of these cases, despite not performing the procedure. The authors observed that non-physicians performing these procedures will be held to a standard of care corresponding to an individual with appropriate training. Therefore, physicians are ultimately responsible for the actions of their non-physician agents.

Within the overall scope of legal action in laser surgery, the most common preventable cause of action was failure to obtain an informed consent. Finally, roughly half of all public cases resulted in decisions in favor of the plaintiff, and the mean indemnity payment was \$380,719. ■

LEGAL PITFALLS OF SOCIAL MEDIA

"Some of the pitfalls [of social media] are inadvertent disclosures to individuals other than healthcare personnel providing consultation; security breaches at the online medical center, which we've already seen at some great institutions; intentional deception online; and intentional disclosures by healthcare professionals to non-secure social media sites. You may have a really interesting case that you want to describe and have been consulted on, but you might have enough information in there to make the patient identifiable even if you don't violate HIPAA specifically."

—Arthur R. Derse, MD, JD, Director of the Center for Bioethics and Medical Humanities at the Medical College of Wisconsin



Watch the full video, in which Dr. Derse discusses the variety of potential pitfalls with social media use in medicine at MATV.com, Search key: "Social Media" OR modernaesthetics.com/tv.asp?f=mass-med-society

